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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-200995

DATE: August 7, 1981

MATTER OF: Rolm Corporation

**DIGEST:**

1. Agency's use of particular method of bid evaluation, involving 10-year maintenance costs and anticipated system growth, is not improper when such method of evaluation is set forth in solicitation.
2. Where switch component of telephone system is partially assembled in foreign country but manufacture of other subcomponents and final assembly of switch incorporating other parts occurs in United States, switch is domestic component for Buy American Act purposes. Therefore, telephone system incorporating switch is domestic end product, and Buy American Act differential should not be applied to system's cost.

Rolm Corporation of Illinois (Rolm) protests the Veterans Administration's (VA) rejection of its bid as nonresponsive under invitation for bids (IFB) 537-62-79, the second step of a two-step advertised procurement. The bid in step two was based on an offeror's approved step one technical proposal for a telephone system at the VA West Side Medical Center, Chicago, Illinois. The system was purchased from Universal Communication Systems, Inc. (Universal), which was found to have the lowest evaluated cost.

[Protest of Bid Rejection as  
Nonresponsive]

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The solicitation required bidders to complete bid work sheets detailing the various cost elements of their bids for each purchase method proposed--lease, lease with option to purchase, purchase--and also required bid "attachments" to the bid work sheets, detailing breakdowns of the various types and quantities of equipment and/or maintenance costs. The VA then evaluated costs on the basis of a 10-year period, using a formula designed to permit comparison of lease with purchase costs and of rates proposed by the telephone company, which is tariffed, with those of interconnect companies, which apparently use different costing techniques. The VA rejected Rolm's step two bid because it did not include the attachments, which the VA maintains are necessary to evaluate the telephone system's cost, growth capacity and operating efficiency over the system's life.

Rolm contends that its step one proposal adequately described the equipment used in the system. The protester maintains that since the VA determined its step one proposal was technically acceptable, its bid under step two without the attachments was responsive. Rolm also contends that its bid for the outright purchase of the system was low.

We need not decide whether Rolm's bid was responsive because, for the reasons set forth below, we have determined that Rolm's bid was not low. Thus, even if the protester submitted a responsive bid, the firm would not have been in line for an award, and we therefore deny the protest.

The IFB instructed bidders to complete the bid work sheets by computing the various cost elements of their bids. The solicitation set forth and described the method to calculate the 10-year maintenance cost, residual asset value and certain growth factors for the telephone system. These growth factors included future relocations and new installations of equipment, which would occur at certain rates set forth in the IFB. The bidder was to enter its calculations on the bid work sheets. The IFB advised bidders that the VA would adjust the bidders' entries to reflect the system's growth in terms of the number of installations and relocations anticipated by the VA. Thus, for example, where Universal estimated 465 relocations for single telephone lines, the VA adjusted the figure to 428 and adjusted Universal's entered cost. These and similar changes lowered Universal's evaluated system cost. Rolm's costs were similarly adjusted.

Rolm's belief that it was low bidder is premised on two grounds. First, Rolm contends that the VA could not adjust bids as the agency did. However, as stated above, the IFB specifically advised that the VA would make adjustments based on anticipated growth in the system in terms of installations and relocations. Consequently, the adjustments were not improper. If Rolm believed the type of evaluation provided for by the solicitation was inappropriate, it should have protested before bid opening. 4 C.F.R. § 21.2(b)(1) (1981).

Second, Rolm argues that it in fact submitted a lower evaluated bid for purchase than did Universal. Universal's evaluated bid was \$1,371,721, which included a \$30,000 Buy American Act differential. The \$30,000 figure is based on the estimated cost of Universal's switch component, \$500,000, multiplied by the Buy American Act factor of 6 percent. Rolm's evaluated bid was \$1,381,993. However, Rolm asserts that the VA should have deducted \$17,546 from Rolm's bid, the residual value of the cable to be used, to yield a net evaluated bid of \$1,364,447, making Rolm the low bidder.

We find that the \$30,000 Buy American Act differential should not have been applied to Universal's bid. Thus, Universal's evaluated cost should have been \$1,341,721, and the firm therefore was entitled to the award in any event.

The Buy American Act, 41 U.S.C. §§ 10a-10d (1976), provides that only such manufactured articles, materials and supplies which have been manufactured in the United States substantially from articles, materials or supplies mined, produced or manufactured in the United States shall be acquired for public use, unless the head of the agency concerned determines it to be inconsistent with the public interest or the cost to be unreasonable. 41 U.S.C. § 10(a). Executive Order No. 10582, December 17, 1954, as amended, provides that materials, articles or supplies are considered to be domestic items and thus accorded preference under the statute if the cost of any foreign products used constitutes less than 50 percent of the cost of all products used therein. See also Federal Procurement Regulations (FPR) § 1-6.101 (1964 ed.). If the cost of the foreign products used constitutes 50 percent or more of the end product's cost, a specified percentage factor (generally 6

percent of the cost of the foreign product) must be added to the end item offer for the purpose of price evaluation in order to give the required preference to domestic offers. FPR § 1-6.104-4(b); Cincinnati Electronics Corporation, et al., 55 Comp. Gen. 1479, 1494 (1976), 76-2 CPD 286. Thus, the Buy American Act differential properly was added to Universal's bid only if the switch in issue is a foreign component, and its cost constitutes 50 percent or more of the end item cost.

In response to the protest, the VA has taken the position that Universal's bid was improperly evaluated because the cost of the switch component (approximately \$500,000) is substantially less than 50 percent of the installed system cost. The record indicates, however, that the switch itself actually is manufactured in the United States and is not a foreign component, so that the differential should not have been applied in any event. See Hamilton Watch Company, Incorporated, B-179939, June 6, 1974, 74-1 CPD 306.

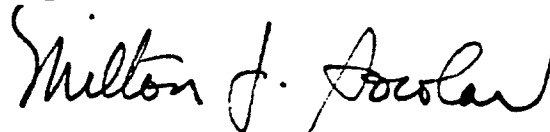
We have been furnished sworn affidavits from representatives of Universal which generally indicate that some of the subcomponents of the switch are assembled in Japan, but the manufacture of other subcomponents and the final assembly of the switch itself occurs in the United States. These affidavits also indicate that items shipped from Japan do not constitute an operable switch and that other steps must be performed in this country in order to produce an operable switch. These steps include the incorporation of other parts, subcomponents and subassemblies into the switch mechanism.

The assembly in the United States of articles or components from foreign-manufactured components may constitute domestic manufacture for Buy American Act purposes. See Bell Helicopter Textron, 59 Comp. Gen. 158 (1979), 79-2 CPD 431; Cincinnati Electronics Corporation, et al., *supra* at 1495. For example, in Hamilton Watch Company, Incorporated, *supra*, we determined that a watch movement was a domestic component even though it included foreign-manufactured parts, since a significant number of assembly operations involving those parts were performed in the United States. On the other hand, we have held that the mere reassembly in the United States of a foreign helicopter airframe, which had been disassembled for the purpose of shipment to the United States,

did not constitute domestic manufacture of that airframe component under the statute. See Bell Helicopter Textron, supra.

On this record, it appears that the final assembly of the switch in this country constitutes something more than the mere reassembly of the component, which was the case in Bell Helicopter Textron, supra, but instead is more akin to the situation in Hamilton Watch Company, Incorporated, supra. On that basis, the switch must be considered a domestic component, and the telephone system a domestic end product for Buy American Act purposes. Consequently, no differential should have been applied to Universal's bid.

In view thereof, Universal's bid should have been evaluated at \$1,341,721. Since according to Rolm its own bid should have been evaluated as \$1,364,447, the award to Universal was proper. The protest is denied.



Acting Comptroller General  
of the United States